1964

Gerald Gundry and Bryce Taylor v. State of Utah et al : Brief of Plaintiffs and Appellants

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

GERALD GUNDRY and BRYCE TAYLOR,
Plaintiffs and Appellants,

— vs. —

STATE OF UTAH; LOUIS DOMENKO, Fiscal Officer, Utah Highway Patrol; LYLE HYATT, Commander, Utah Highway Patrol; and CLAIR R. HOPKINS, Chairman, Utah Commissioner of Finance,
Defendants and Respondents.

Case No. 10090

Brief of Plaintiffs and Appellants

Appeal From the Judgment of the
Third District Court for Salt Lake County
Hon. Stewart M. Hanson, *Judge*

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STATEMENT OF THE KIND OF CASE

This was an action for declaratory judgment to determine whether the Utah Highway Patrol could validly retain contributions made by Plaintiffs-Appellants to the Utah Highway Patrol Retirement Fund. Plaintiffs prayed for a declaration for refund, based on favorable interpretations of U. C. A. 49-8-1 to 49-8-5, as amended.

DISPOSITION IN LOWER COURT

The case was tried before the Honorable Stewart M. Hanson, Judge, Third Judicial District, sitting without jury. From a decree denying Plaintiffs' prayer, Plaintiffs-Appellants appeal.

RELIEF SOUGHT ON APPEAL

Plaintiffs-Appellants seek reversal of the decree entered by the Trial Court and seek a further decree, declaring that Plaintiffs-Appellants are entitled to refund of their contributions.

STATEMENT OF FACTS

Plaintiffs initiated action for declaratory judgment, praying that the Trial Court declared the retention of Plaintiffs' contributions to the Utah Highway Patrol Retirement Fund by the Utah Commissioner of Finance void and against public policy. Plaintiffs prayed for refund of the amounts contributed by them during their employment.

The Defendants contended that a refund was not available because the statutes did not provide for a refund and by the absence of a provision for refund, the legislature manifested its intention that such contributions by employees of the Highway Patrol be forfeited when employment is terminated prior to retirement age. The Defendants also denied the refund on the basis that the Plaintiffs, during their employment with the High-

way Patrol, were advised of the forfeiture of any contributions made by the Plaintiffs and that the Plaintiffs consented to such forfeiture.

In view of the absence of any statutory provision permitting or denying refund of contributions made by Highway Patrolmen, the primary problem at trial was to determine the legislative intent in regard to possible refunds.

Throughout the trial, Plaintiffs contended that the legislature intended a refund of contributions made by Highway Patrolmen, and a Statutory provision permitting such refund was omitted by inadvertence and not by design. This contention was based on the fact that the legislature provided for a refund to all members and employees of other State, County and Municipal agencies. Also, Plaintiffs contended that the Trial Court should not construe a statute to permit forfeiture unless the evidence at trial clearly showed a contract for forfeiture. This contention is based on the policy established by the majority of the Courts.

The Defendants, on the other hand, contended that the Plaintiffs agreed to the forfeiture, and such agreement created a binding contract upon the Plaintiffs for the forfeiture of all contributions made by Plaintiffs to the Utah Highway Patrol Retirement Fund. The Defendants further contended that the legislature purposely omitted provision for refund and that such omission resulted after the legislature carefully studied and ana-

lyzed the actuarial reports presented to them of the Highway Patrol Retirement program.

The Trial Court denied the Plaintiffs' petition for declaratory judgment in their favor. The decision of the Court was based on the finding that the statutory provisions in question did not provide for a refund, as contrasted to the statutory provisions of the other retirement programs which permitted refund. The Court further found that the legislature intended that no refunds be permitted in the interest of inducing employees of the Highway Patrol Department to make a life career of the Highway Patrol and to keep the retirement fund on a sound basis.

ARGUMENT

THE TRIAL COURT ERRED IN ITS INTERPRETATION OF SEC. 49-8-1, ET SEQ., U. C. A., 1953, AS AMENDED.

The pertinent statutory provisions in question, 48-8-1, et seq., U. C. A., 1953, as amended, create a retirement fund for male employees of the Utah Highway Patrol. The provisions of this statute do not provide for or deny refund of contributions which are made by the Highway Patrolmen when employment is terminated before the employees qualify for retirement. Notwithstanding the absence of any clear indication as to the legislative intent regarding refunds of contributions, the Trial Court determined that the Plaintiffs-Appellants were not entitled to refund of their contribution to the retirement fund. In effect, the Trial Court has adopted a construction of the statute involved to permit a for-

feiture without proof that the legislature, in fact, intended a forfeiture.

The law regarding forfeitures is clear and of long standing in Utah and in our sister states; the law abhors forfeitures unless the statute or written agreement clearily indicates that a forfeiture was intended.

In *Morgan* v. *Sorensen,* 286 P. 2d 229 3 U. 2d 428, the Utah Supreme Court was confronted with a case involving the interpretation of a statute on forfeitures of mining claims. In denying forfeiture, Justice Crockett, speaking for the majority, stated:

> "We should show the same liberality in construing the suspension statute as has been used in construing the assessment work requirement, for the same purpose of avoiding forfeitures, *which are regarded odious to the law.*" (Emphasis added)

The Supreme Court of California has also taken the view that a statute will not be construed to work a forfeiture which would work a harsh and unjust result in absence of a clear indication by the legislature that it so intended. In *Madera County* v. *Gendron,* 382 P. 2d 342, 31 Cal. Rptr. 302, the California Supreme Court was asked to affirm a judgment which declared that because the district attorney had violated a statute which prohibited private practice, he had forfeited his pay as district attorney.

In reversing the Trial Court's decision, the Supreme Court stated:

> "To adopt the construction urged by the Plaintiff would cause a forfeiture, which would work a

harsh and unjust result; *we are reluctant so to construe the statute in the absence of a clear indication by the legislature that it so intended.* (Metropolitan Water District v. Adams (1948), 32 Cal. 2d 620, 197 P. 2d 543; Bakkenson v. Superior Court (1925) 197 Cal. 504, 241 P. 847). To withhold all salary from the District Attorney in order to effectuate the section is to use a blunt instrument of enforcement, despite the availability of more sensitive sanctions which may be tailored to the nature and gravity of the breach.

"We hold, therefore, that the defendant may lawfully receive his salary during his term of office, notwithstanding his failure to conform to the proscription upon engaging in the private practice of law . . ."

The rule on forfeitures applies to contractual provisions as well as statutory provisions. In *Grant* v. *Palfreyman,* 166 P. 2d 215, 109 P. 291, our Supreme Court was confronted with a claim of forfeiture on a construction contract. In reversing the Trial Court's judgment for forfeiture, the Supreme Court of Utah held:

"Forfeitures are not favored and in interpreting an agreement, every reasonable presumption should be indulged against an intention to allow a forfeiture." (See also: Swain v. Salt Lake Real Estate Investment Company, 279 P. 2d 709, 3 U. 2d 121.)

In a California case involving the interprteation of certain provisions in a contract, the Supreme Court of California stated:

"The contract makes no provision for its termination or for the forfeiture of the interest of

either party. *If no forfeiture is to occur by virtue of a provision of an agreement, surely none can be created upon the demand and for the accommodation of one of the parties.*" Plante v. Gray, 157 P. 2d 421, 68 CA 2d 582. (Emphasis added)

In *Radach* v. *Prior*, 297 P. 2d 605, 48 Wash. 2d 901, the Supreme Court of Washington denied a forfeiture and stated:

> "Forfeitures are not favored in law, and equity will seize upon inequitable circumstances arising from contract or conduct of the party in order to avoid a forfeiture."

The reference books are replete with annotations of cases denying the validity of forfeiture clauses in contract, and the cases appear to generally hold that the courts abhor forfeiture clauses and forfeiture as a remedy for the aggrieved. The language used in 12 *Am. Jur., Contracts*, Section 436, appears to be the general attitude of all the Courts toward forfeitures. Portions of this section read as follows:

> "Forfeitures are not favored by law; indeed, they are regarded with disfavor. It is well settled that forfeitures by implication or by construction, not compelled by express requirements, are regarded with disfavor. Contracts involving a forfeiture cannot be extended beyond the strict and literal meaning of the words used. Since forfeitures are not favored either in equity or in law, provisions for forfeitures are to receive, where the intent is doubtful, a strict construction against those for whose benefit they are introduced. Courts are reluctant to declare and enforce a forfeiture, if by

reasonable interpretation it can be avoided." (pp. 1016-17). For further reference, see Pac. Dig. CONTRACTS, Key No. 3, Sec. 18.

It is obvious that the law as to forfeitures is a firm and established rule, even in cases where the parties have by writing agreed to the forfeiture. Certainly, in cases where no writing can be produced to establish the forfeiture, and the pertinent statutes are silent as to the intent of the legislature, the Court should not establish a forfeiture agreement merely on the demand of one party; nor should the Court infer from the statutes that the legislature, in fact, intended a forfeiture where such forgeitures are frowned upon by the Courts and the presumption lies against forfeitures.

At trial, the defendants offered several arguments regarding statutory construction which may warrant consideration here.

Initially, defendants argued that since no provision for refund was made by the legislature, the legislature must have intended a forfeiture. However, it is equally feasible to believe that a provision for refund was inadvertently omitted, and this, especially, since the provisions for all other retirement funds permit at least partial refund.

The defendants also argue that the "mention of one thing implies the exclusion of another." As rules for statutory interpretations go, the Plaintiffs offer no rebuttal to this maxim. This rule, however, is inapplicable

here, since the entire controversy arises from the fact that the legislature did not "mention" anything in regard to refund of contributions. Defendants further contended that when the language is clear and unambiguous, no other interpretation is permitted. Again, this rule is inapplicable here, as the conflict arises not from ambiguity of words, but the absence of it.

Defendants next contended that the presumption of constitutionality rests with each statute until such presumption is overcome by clear evidence. The Plaintiffs do not deny that such is the rule, but merely urge that a statute should not be construed to effectuate a forfeiture without clear evidence that the legislature intended such a forfeiture.

Finally, Defendants argued that the Plaintiffs have no vested interest in the retirement fund and are, therefore, not entitled to refund. The Plaintiffs have never claimed any vested interest in the retirement fund, as such. They merely contended that they have an interest as to their respective contributions to the fund. Certainly, Plaintiffs have not met the requirements for retirement and are, therefore, not entitled to any retirement benefits from the retirement fund. On the other hand, the contributions made by Plaintiffs were made out of their wages. This amount was part of their monthly compensation and as such, should be returned to them. Such a refund would not be unprecedented, notwithstanding the absence of statutory authority, and would merely be a refund of wages withheld.

In *Sommers* v. *Patton*, 399 Ill. 540, 478 N.E. 2d 313, an employee demanded return of his conribution to retirement fund which was classified as a public employee fund. The custodian of the retirement fund denied the refund. In permitting the refund, the Illinois Supreme Court stated that the refund was, in fact, a final release for prior wage deductions.

The defendants urged that the legislature purposely omitted a refund clause in creating the Utah Highway Patrol retirement because all other retirement funds specifically provide for refund of contributions, and had the legislature intended refund, the statute would have so provided. Yet the opposite of this is equally logical. All other retirement funds were created prior to the Highway Patrol Retirement Fund, and it would seem to follow that the legslature intended to give all public employees a refund of their contributions if employment was voluntarily terminated; that the legislature inadvertently failed to provide for refund in this case. Since all other retirement funds for governmental employees of Utah are allowed refund, it would seem that the Highway Patrol should not be excepted, unless specifically excepted by statute. In 50 *Am. Jur.*, *Statutes*, Section 326, in regard to the legislative silence or acquiescence, it is stated that "It is the general rule that the intent of the legislature is indicated by its action, not by its failure to act." Further, at 50 *Am. Jur.*, *Statutes*, Section 348, the authors state:

> "It is a fundamental rule of statutory construction that sections and acts in pari materia, and all parts thereof, should be construed together, and

compared with each other. No one act, or portion of all the acts, should be singled out for consideration apart from all the legislation on the subject. Under this rule, each statute or section is construed in the light of, with reference to, or in connection with, other statutes or sections. Recourse is had to the several statutes or sections for the purpose of arriving at a correct interpretation of any particular one. The object of the rule is to ascertain and carry into effect the intention of the legislature. It proceeds upon the supposition that the several statutes were governed by one spirit and policy, and were intended to be consistent and harmonious in their several parts and provisions."

Section 349 of the same volume and heading reads as follows:

"Under the rule of statutory construction of statutes in pari materia, statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of a great, connected homogeneous system, or a single and complete statutory arrangement. Such statutes are considered as if they constituted one act, so that sections of one act may be considered as though they were parts of the other act, as far as this can reasonably be done. Indeed, as a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmantary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, and they should be so construed as to harmonize the general tenor or purport of the system and make the scheme consistent in all parts and uniform in its operation, unless a different purpose is shown plainly or with

irresistible clearness. It will be assumed or presumed, in the absence of words specifically indicating the contrary, that the legislature did not intend to innovate on, unsettle, disregard, alter or violate a general statute or system of stautory provisions the entire subject matter of which is not directly or necessarily involved in the act."

Section 350 reads:

"Although there may be statutory provisions which, in a sense, relate to the same matter and yet, are not in pari materia, the general rule is that statutes or statuory provisions which relate to the same person or thing, or to the same class of persons or things, or to the same or a closely allied subject or object, may be regarded as pari materia. Statutes which have a common purpose, or the same general purpose, or are parts of the same general scheme or plan, or are aimed at the accomplishment of the same results and the suppression of the same evil, are also ordinarily regarded as in pari material. This is true of statutes which have for their common purpose the carrying out specifiically of the mandate of the same constitutional provision."

By these rules of statutory interpretation, the statutory provisions of the Highway Patrol Retirement Fund would have to be analyzed in conjunction with all of Title 49, U. C. A., 1953, as amended, since all sections and chapters under Title 49 deal specifically with retirement funds for State and governmental employees. The logical conclusion from such analysis would be that the legislature intended to give all such employees, including Highway Patrolmen, a refund of their respective contributions to their retirement funds when the employees

terminated employment prior to meeting the requirements for retirement.

The Trial Judge has held and the defendants urged that the legislature omitted a refund clause because it intended that the retirement fund be kept on a sound basis. It would seem that the legislature intended that *all* retirement funds be kept on a sound financial basis. The judgment of the Trial Court also indicates that the legislature intended to induce Highway Patrolmen to make the Highway Patrol Department a life career. It would appear that the legislature intended to induce *all* State and other governmental employees to make their jobs life careers. The very existence of all of the retirement funds would seem to indicate that the legislature intended to induce permanent employment with governmental agencies. It does not follow that the absence of a refund clause is a special indication by the legislature that it intended the forfeiture of contributions if Highway Patrolmen decided to terminate their services with that Department. The inducement, if any, would seem to be the creation of the fund — not the absence of a refund clause.

No evidence was presented at the trial upon which the Trial Court's judgment could be supported. The judgment rendered below, denying Plaintiffs' prayer for refund, effects a forfeiture without clear evidence that the legislature intended a forfeiture.

The Plaintiffs respectfully submit that the Trial Court's ruling is simply the declaration of a forfeiture,

which is not supported by evidence or statute; and the judgment should, therefore, be reversed, and a judgment entered, declaring Plaintiffs eligible for refund of their contributions.

CONCLUSION

The judgment of the Trial Court is simply a declaration permitting forfeiture of Plaintiffs' contributions to the Utah Highway Patrol Retirement Fund. The judgment is not supported by evidence and should, therefore, be reversed, and a judgment entered, declaring Plaintiffs eligible for refund.

Respectfully submitted,

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